

December 26, 2002

The Hon. Bob Brown  
Secretary of State  
P.O. Box 209801  
Helena, MT 59620-9801

Dear Mr. Brown:

You have requested an opinion from the Attorney General regarding the following question:

Does the Secretary of State violate a reasonable expectation of privacy by publishing on the Internet the identity of the officers, directors, and registered agent of a corporation authorized to do business in Montana if the information published is derived from paper records maintained by the Secretary of State that are available for inspection by the public?

Since your question is fact-specific and can be answered by reference to established case law, it has been determined that a letter of advice rather than a formal opinion is the appropriate vehicle for response to your inquiry.

Your question arises from an initiative undertaken by your office to publish on the Internet a database containing information derived from business records filed with the office of the Secretary of State. The Secretary of State is required to accept for filing articles of incorporation for each business corporation incorporated under the laws of the state of Montana. Mont. Code Ann. §§ 2-15-401(1)(d); 35-1-216. The articles must include the identities of the corporation's registered agent, incorporators, and initial directors. Mont. Code Ann. § 35-1-216 (1)(c)(ii), (1)(d), (2)(a). Foreign corporations wishing to transact business in Montana must provide similar information in a filing with the Secretary of State. Mont. Code Ann. § 35-1-1028(1)(e), (f). Both domestic and foreign corporations are further required to update this information in an annual report filed with the Secretary of State. Mont. Code Ann. § 35-1-1104 (1)(b), (d). By statute, these documents are available for inspection and copying by the public. Mont. Code Ann. § 2-15-401(1)(g).

Your letter informs me that, at the request of certain members of the public who make extensive use of these paper records, your office has undertaken an initiative to automate the records and make them available to users over the internet. I gather from your letter that the information made available online is derived entirely from that which is available in the paper records in your office, and discloses only information that is available to the public in the paper records that they may review and copy by law.

The question thus becomes whether making this information, which is otherwise already a matter of public record, available online somehow compromises a reasonable expectation of privacy. In my opinion it clearly does not. The law appears to be well established that information that is voluntarily disclosed to third parties may not be the subject of a reasonable expectation of privacy. Hastetter v. Behan, 196 Mont. 280, 283, 639 P.2d 510, 512-13 (1982). While later cases contain dicta suggesting that the right of privacy may protect information that is generally known in the community, see, e.g., Goyen v. City of Troy, 276 Mont. 213, 222, 915 P.2d 824, 830 (1996) (“We have recognized that even ‘harmless or generally known information’ is subject to constitutional protection.”), these cases appear to be limited to situations involving commonly known information that is intermingled with information that the subject person might reasonably expect would remain private.

In Goyen, the information at issue involved an intimate relationship between a citizen and a police officer. The Court cited Missouliau v. Board of Regents of Higher Education, 207 Mont. 513, 675 P.2d 962 (1984) for the general proposition that “generally known” information may be entitled to “constitutional protection.” In Missouliau, the Court did not purport to establish a broad exception to the rule previously announced in Hastetter. The Court simply noted that, in employment records, public and private information are frequently intermingled, and that the latter need not be disclosed simply because it is kept in close proximity to the former. 207 Mont. at 525, citing Montana Human Rights Division v. City of Billings, 199 Mont. 434, 649 P.2d 1283 (1982). Goyen cites Hastetter with approval, 276 Mont. at 221, and does not suggest that the Court intended to limit the earlier case’s holding. Under such circumstances, I believe it would be mistaken to read Goyen to undermine the logical rule of the prior case.

Persons who serve as the registered agents of corporations or as their officers or directors clearly have no expectation that their names and business addresses will remain unknown to the public. As your letter notes, the very purpose of requiring the provision of this information to your office is to notify the general public of the identity of the officers, directors, and registered agent of corporations doing business in Montana, so that the public may know how to contact and deal with the persons responsible for corporate operations. Any person who has the wherewithal to visit your office has been entitled by

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law to view and obtain copies of this information for decades. Indeed, your rules have allowed persons to receive this information by facsimile machine transmission since at least 1989. ARM § 44.2.202.

Publication of data on the Internet when it is filed with your office for use by the public and is already available to the public on paper and in other forms of electronic media cannot logically be said to invade the privacy of persons to whom the data relate. The information has been voluntarily transmitted to your office with the understanding that any person can have access to it, and indeed have copies of it. No reasonable person would expect that such information would remain private, regardless of how it is made available to the public.

For the foregoing reasons, it appears clear that the Secretary of State may publish this information on the Internet without violating the privacy rights of the officers, directors, and registered agent of corporations. This letter of advice may not be viewed as a formal opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN  
Chief Civil Counsel

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